

CITY OF HAYWARD
AGENDA REPORT

AGENDA DATE 10/14/03

AGENDA ITEM _____

WORK SESSION ITEM WS #2

TO: Mayor and City Council

FROM: City Manager

SUBJECT: Medicinal Marijuana

RECOMMENDATION:

It is recommended that the City Council review and comment on this report.

BACKGROUND:

Earlier this year, the City received a land use application for permission to establish a facility in the downtown area to dispense marijuana for medicinal purposes. The applicant was advised such a use is not allowed under the City's zoning regulations. Subsequently, it became common knowledge that at least three such facilities were operating in Hayward: one on B St. and two on Foothill Blvd. Shortly thereafter, the Council received a request to establish an ad hoc task force to determine if and how such facilities might be allowed to continue. Eventually, the Mayor indicated she would establish such a task force, and the Council approved the use of staff resources in this regard. (Attachment A is a list of the individuals that participated in the task force.)

In comments submitted to the City, many expressed compassion for those using marijuana for medical purposes, likening it to any other instance in which medicine is used to alleviate pain. Some voiced concern that the number of dispensaries located in Hayward not proliferate. In a related observation, the Chamber and some retail establishments downtown expressed the view that having dispensaries on B St. runs counter to the numerous efforts currently underway to revitalize the downtown area. Others observed that the real problem lies in the conflict between State and Federal laws. While Proposition 215, approved by the voters in 1996, sanctioned the use of marijuana for medical purposes, the Federal Government does not recognize this authorization. This inconsistent treatment hinders the development of a satisfactory and fully acceptable solution to this matter.

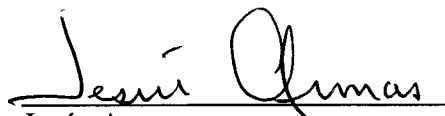
The task force met on at least two occasions. During the deliberations, it became clear that we are contending with two major issues. First, that individuals relying on marijuana to alleviate their pain or address a medical condition not be subject to arrest or other legal sanctions. A second issue focuses on how local governments contend with operators wishing to establish facilities to dispense marijuana. Available research indicates that to the extent local governments have dealt with the medicinal marijuana issue at all, most have dealt with the first issue, but sparingly with the second one. (It should be noted that although Proposition 215 was approved nearly ten years ago, the State has yet to promulgate regulations to implement it.)

One way local agencies have addressed the first issue is by developing a mechanism allowing for the issuance, on a voluntary basis, of identification cards for those possessing marijuana for legitimate, medical purposes. While possession of such cards does protect the individual from prosecution, it can be of assistance to local law enforcement personnel interacting with that person. I am advised that the counties of Marin and San Francisco have approved an I.D. card system, and Alameda approved its own system earlier this year. In the case of Alameda, the County may issue the card through its health department, or through a third party, should the County approve one.

On the issue of dispensaries, we were unable to find examples comparable to Hayward in terms of zoning regulations permitting such facilities. It may very well be that the conflict mentioned above between State and Federal law has resulted in most communities taking a wait and see attitude until the conflict is resolved.

The meetings of the task force were fruitful, and participants gained a better appreciation of the concerns and interests of the various parties. Because the dialogue was a constructive one, ultimately a compromise solution emerged which took into account the underlying objective of Proposition 215, while recognizing the fact there remains an ongoing conflict between Federal and State law. Essentially, this solution contains two major components. The first component asks the City Council to consider the development of an ordinance allowing for the issuance and acceptance of identification cards. The second element would allow for the two existing facilities on Foothill Blvd. to be "grandfathered", subject to adherence to certain conditions. (See Attachment B for a listing of the conditions.) During the meeting of the task force, the Chamber expressed strong objection to any facility being located on B St. However, at the meetings it was reported that the facility located on B Street was planning to move to another location in the County, making the matter of what to do with that facility moot. (Recently, it has come to our attention that although the B St. facility has closed, Ms. Jane Weirick has begun to dispense marijuana from her establishment on Foothill. From the staff perspective, we believe this is counter to the "compromise solution". Ms. Weirick believes it is consistent, contending that the objective of not having any dispensaries on B St. has been met and that the net number of facilities remains the same, with all of the facilities located on Foothill.)

The staff is seeking Council direction on whether an ordinance should be developed with regard to the issuance of identification cards. For your information, Attachment C is a copy of the ordinance adopted by the County, along with the related agenda report. If the Council supports preparation of an ordinance, staff suggests that it be modeled after the one adopted by the County. With regard to the facilities, if the approach herein is acceptable, staff would prepare letters of understanding to be executed with the operators of the dispensaries to assure compliance with the provisions as outlined in Attachment B.



Jesús Armas
City Manager

Attachments

ATTACHMENT A

Medicinal Marijuana Ad Hoc Task Force

Jeff Jones, Oakland Cannabis Buyers Cooperative

Shon Squier, Local Patient's Cooperative

Jane Weirick, Medical Cannabis Association

John Wichman, Westminster Hills Church

Chris Zaballos, Hayward Chamber of Commerce

City Participants

Roberta Cooper, Mayor

Jesús Armas, City Manager

Michael O'Toole, City Attorney

Maureen Conneely, Assistant City Attorney

ATTACHMENT B

OPERATING CONDITIONS FOR GRANDFATHERED
MEDICINAL MARIJUANA DISPENSARIES

1. The two existing Foothill dispensaries—Hayward Hempery and Local Patient's Cooperative—to be grandfathered and allowed to remain in operation, consistent with the items enumerated herein.
2. Operators must manage facilities to ensure they are safe and sanitary, and do not create a demand for police services.
3. Operators will actively discourage their patients/patrons from smoking or gathering in the sidewalk. Smoking on premises will be generally discouraged, except for extraordinary cases arising from physical necessity.
4. Operators will not advertise.
5. Operators will have no more than three pounds of marijuana on site at any one time.
6. Police personnel will periodically visit the facilities to confirm facility is safe and sanitary, and to verify that the quantity of marijuana on site does not exceed established limit.
7. If quantity is exceeded, or demand for police services is excessive, facilities will close within 30 days.
8. The facilities are grandfathered for three years, subsequent to which facilities must cease operation. If the conflict between federal and state law is resolved, the City will entertain amending the zoning ordinance to provide for the issuance of conditional use permits for marijuana dispensaries.



Board of Supervisors

Nathan A. Miley
Supervisor, District 4

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March 13, 2003

Honorable Board of Supervisors
County Administration Building
1221 Oak Street, Room 536
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AGENDA 18 March 18, 2003

SUBJECT: The passage of an ordinance that creates a voluntary medical cannabis (marijuana) identification card program for County residents whose doctors have recommended the use of medical cannabis under the guidelines of California Health and Safety Code 11362.5.

RECOMMENDATION:

I am submitting, for your review, an ordinance that would allow medical cannabis patients who reside in Alameda County to obtain an identification card stating that they are a legitimate medical cannabis patient under California Health and Safety Code 11362.5. By passing this ordinance the County will be helping patients who possess, cultivate, or transport medical cannabis to show local law enforcement personnel, landlords, neighbors, employers, or any other interested party that they are allowed, under state law, to be in possession of medical cannabis. This ordinance will also provide for the issuance of identification cards to the primary caregivers for these patients, as oftentimes the caregiver is the person who cultivates or transports the cannabis for the more seriously ill patients. This ordinance does not protect the patient or caregiver from federal prosecution, nor does it immediately protect them from arrest were they to be approached by local law enforcement personnel. The cards issued would simply be a convenient way for medical cannabis patients to identify themselves without necessarily having to divulge their entire medical condition or history. It is recommended that this Board pass this ordinance and instruct the Department of Public Health to begin developing the program.

SUMMARY/DISCUSSION:

In November 1996 the people of California voted in favor of Proposition 215 allowing for the legal possession, cultivation, and use of cannabis (marijuana.) The language in the initiative was fairly simple in that it allows the use of cannabis but does not establish any guidelines for implementation. Many local jurisdictions have taken it upon themselves to implement regulations that will make cannabis safe and accessible to patients while not hindering law enforcement efforts to stop the illegal use or distribution of non-medical

marijuana. Marin and San Francisco Counties have implemented their own I.D. card system, as have the Cities of Arcata and San Diego. In other jurisdictions private organizations have stepped up to issue cards after verifying patient qualifications, and many law enforcement entities have shown a willingness to accept these cards as a form of patient verification that is more efficient than a doctors written recommendation.

During the six years since Proposition 215 passed, the Attorney General and State Senator John Vasconcellas have studied various regulations that could be created statewide to help implement the law. However, to date there are no such programs. Because of the controversy that has surrounded this law, as well as the varied understanding of whether the law has been upheld or not, some patients have been involved in embarrassing, costly and sometimes painful interactions with law enforcement personnel and the courts. There have been reports of medical cannabis patients having their homes searched, their medicine confiscated or destroyed, and their savings depleted on attorney costs due to misunderstandings about Health and Safety Code 11362.5. By creating a system for patients to obtain an I.D. card from the County which bears the County Seal as well as a twenty-four hour verification phone number, the County will be providing some legitimacy for these patients. Also, law enforcement personnel will be able to quickly determine if an individual has the legal right to possess medical cannabis under state law.

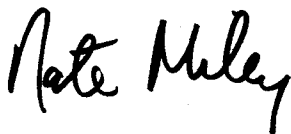
IMPLEMENTATION:

The County Public Health Department would be the lead agency overseeing this program. Staff from the department have researched models in other jurisdictions and met with some patients to better understand the depth of the issues surrounding caregiver qualifications, as well as patient verification. The ordinance, in its current form, requires that an RFP be issued to secure an outside entity to actually administer the program. There are groups currently that have a system in place whereby a nurse performs an investigation of any applicant for an I.D. card. This process includes ensuring that the patient is truly under the care of the doctor issuing the recommendation, and that the doctor is in good standing with the state medical board. Patients with chronic conditions would need to have their cards renewed annually and penalties are built in for anyone fraudulently obtaining a card.

FINANCING:

The program will be administered by an outside organization, and monitored by the Department of Public Health. Until the department develops an RFP and does an analysis of what staff time will be necessary to monitor the program, the cost is not yet known. However, due to the fact that cards are already issued by private organizations with an associated fee, any County cost can be absorbed through a surcharge on the cards.

Sincerely,

A handwritten signature in black ink that reads "Nate Miley". The signature is written in a cursive, slightly slanted style.

Nate Miley

MEDICAL CANNABIS

Chapter 6.110 MEDICAL CANNABIS PATIENT AND PRIMARY CAREGIVER IDENTIFICATION CARDS

Section 6.110.010 Title and purpose.

The provisions of this chapter shall be known as the medical cannabis patient and primary caregiver identification card program. (Ord. 2003-53 § 1 (part))

Chapter 6.110 MEDICAL CANNABIS PATIENT AND PRIMARY CAREGIVER IDENTIFICATION CARDS

Section 6.110.020 Purpose of medical cannabis patient and primary caregiver identification cards.

The general purpose of the medical cannabis patient and primary caregiver identification card program is to recognize and protect the rights of qualified patients, their caregivers, physicians, and medical cannabis organizations, and to facilitate access to safe and affordable medical cannabis pursuant to the Compassionate Use Act of 1996 as codified at California Health and Safety Code Section 11362.5. In order to support this purpose, the county of Alameda recognizes that a "medical cannabis organization," as defined herein, may provide educational information, referral or networking services concerning access to safe, affordable, and lawful medical cannabis. This chapter shall not be construed by any member of the public to authorize possession, use, or transportation of cannabis that is not authorized by Health and Safety Code Section 11362.5 or by federal law. (Ord. 2003-53 § 1 (part))

Chapter 6.110 MEDICAL CANNABIS PATIENT AND PRIMARY CAREGIVER IDENTIFICATION CARDS

Section 6.110.030 Definitions.

For the purpose of this chapter, certain words and phrases shall be construed as defined herein. Words in the singular include the plural, and words in the plural shall include the singular. Words in the present tense shall include the future. Masculine pronouns include feminine meaning and are not intended to be gender specific.

"Cannabis" shall mean marijuana and all parts of the plant "cannabis," whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term, "cannabis" does not include non-medicinal parts such as the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seeds of the plant are incapable of germination.

"Department" shall mean the department of public health of the county of Alameda or an

authorized contractor of the department of public health of the county of Alameda.

"Director" shall mean the director of public health for the county of Alameda or his designee.

"Medical cannabis organization" shall mean a cooperative, affiliation, organization or collective of persons, the main purpose of which is to provide educational information, referral or networking services concerning access to safe, affordable, and lawful medical cannabis. AN ENTITY MAY FUNCTION AS A MEDICAL CANNABIS ORGANIZATION UNDER THIS CHAPTER ONLY IF DESIGNATED AS SUCH BY THE COUNTY OF ALAMEDA PURSUANT TO SECTION 6.110.050(a) OF THIS CHAPTER.

"Medical cannabis patient and primary caregiver identification card program" shall mean the activities by the county of Alameda and persons authorized by the county to carry out the purposes of this chapter.

"Primary caregiver" shall mean the person or persons designated by the person exempted under California Health & Safety Code Section 11362.5(e) who has consistently assumed responsibility for the housing, health, or safety of that individual.

"Qualified patient" shall mean persons who qualify to use medical cannabis as set forth in California Health & Safety Code Section 11362.5. Minors would be required to obtain written consent from a parent and/or guardian. (Ord. 2003-53 § 1 (part))

Chapter 6.110 MEDICAL CANNABIS PATIENT AND PRIMARY CAREGIVER IDENTIFICATION CARDS

Section 6.110.040 Medical cannabis patient and primary caregiver identification card program.

The county of Alameda hereby establishes a voluntary medical cannabis patient and primary caregiver identification card program in accordance with this chapter. This program is not required by state law, Health and Safety Code Section 11362.5. Such programs shall be administered by the medical cannabis organization designated in accordance with this chapter. (Ord. 2003-53 § 1 (part))

Chapter 6.110 MEDICAL CANNABIS PATIENT AND PRIMARY CAREGIVER IDENTIFICATION CARDS

Section 6.110.050 Designation of medical cannabis organization.

(a) The county will contract with one or more entities as medical cannabis provider organizations upon the recommendation of a review committee as part of the open and competitive request for proposals (RFP) process of Alameda County.

(b) The designated medical cannabis organization shall facilitate the provisions of this chapter, including carrying out the purposes of this chapter by providing a medical cannabis identification card program for qualified patients and primary caregivers. (Ord. 2003-53 § 1 (part))

Chapter 6.110 MEDICAL CANNABIS PATIENT AND PRIMARY CAREGIVER IDENTIFICATION CARDS

Section 6.110.060 Issuance of medical cannabis patient identification cards.

(a) Medical cannabis organizations shall be authorized to issue a medical cannabis patient identification card to any qualified patient, pursuant to this chapter and any regulations adopted hereunder.

(b) The director is authorized to develop and publish regulations that specify the minimum qualifications and method of issuing medical cannabis patient identification cards to qualified patients.

(c) In addition to compliance with the regulations developed by the director, every applicant for a medical cannabis patient identification card shall present to the medical cannabis organization proof that the applicant's physician recommends cannabis use for the applicant and a California driver's license or a California state identification card. (Ord. 2003-53 § 1 (part))

Chapter 6.110 MEDICAL CANNABIS PATIENT AND PRIMARY CAREGIVER IDENTIFICATION CARDS

Section 6.110.070 Issuance of medical cannabis primary caregiver identification cards.

(a) Medical cannabis organizations shall be authorized to issue a primary caregiver identification card to any primary caregiver pursuant to this chapter and any regulations adopted hereunder.

(b) The director is authorized to develop and publish regulations that specify the minimum qualifications and method of issuing a primary caregiver identification card to primary caregivers.

(c) In addition to compliance with the regulations developed by the director, every applicant for a primary caregiver identification card shall provide to the medical cannabis organization proof that the applicant is a primary caregiver and other identification, such as a California driver's license or a California state identification card. In addition, the primary caregiver shall provide the recommendation by the qualified patient's physician for the medical use of cannabis by the qualified patient and the qualified patient's California driver's license or the California state identification card. (Ord. 2003-53 § 1 (part))

Chapter 6.110 MEDICAL CANNABIS PATIENT AND PRIMARY CAREGIVER IDENTIFICATION CARDS

Section 6.110.080 Applicability of medical cannabis patient and caregiver identification cards.

(a) The medical cannabis patient identification card, issued in accordance with this chapter, shall bear a unique serial number, a California driver's license number or a California state identification card number, date of issuance of the identification card, first, middle, and last name of the card holder, a signature of the card holder, a picture or photograph of the card holder, the date of expiration of the identification card, and a statement that patient is in compliance with this chapter and Health and Safety Code Section 11362.5.

(b) The medical cannabis primary caregiver identification card, issued in accordance with this chapter, shall bear a unique serial number, a California driver's license number or a

California state identification card number, date of issuance of the identification card, first, middle, and last name of the cardholder, a signature of the card holder, a picture or photograph of the card holder, the date of expiration of the identification card, and a statement that patient is in compliance with this chapter and Health and Safety Code Section 11362.5.

(c) Both medical cannabis patient identification cards and primary caregiver identification cards shall state the following: "This card does not protect an individual from arrest or prosecution for the use, possession or transportation of cannabis that is not authorized by Health and Safety Code § 11362.5 or federal law." (Ord. 2003-53 § 1 (part))

Chapter 6.110 MEDICAL CANNABIS PATIENT AND PRIMARY CAREGIVER IDENTIFICATION CARDS

Section 6.110.090 Investigation and verification of medical cannabis patient and caregiver identification cards.

(a) The medical cannabis organization shall review and determine the validity of the documentation and statements made in support of each application for a medical cannabis patient identification card and a primary caregiver identification card in accordance with the regulations developed by the director as set forth in Section 6.110.060. The medical cannabis organization shall issue the requested card upon satisfactory completion of the application process.

(b) All documentation on a medical cannabis patient or a primary caregiver shall be kept on file in a manner accessible to the department for purposes of monitoring and compliance.

(c) Upon request from law enforcement, the designated medical cannabis organization is authorized to verify the current status of the identification card based only upon the serial number. Both qualified patient and primary caregiver cards will bear a telephone number which law enforcement authorities may call twenty-four (24) hours a day to verify the identification cards' validity.

(d) Any person who shall present false information or falsify, forge, or alter a document to support a request for a medical cannabis patient identification card or a primary caregiver identification card or make, create, sell, or use a false medical cannabis patient identification card or a primary caregiver identification card shall be guilty of a misdemeanor. (Ord. 2003-53 § 1 (part))

Chapter 6.110 MEDICAL CANNABIS PATIENT AND PRIMARY CAREGIVER IDENTIFICATION CARDS

Section 6.110.100 Expiration date.

(a) A medical cannabis patient identification card may be granted at any time. A medical cannabis patient identification card shall remain valid for no longer than one year. A person may apply to renew such a medical cannabis patient identification card. Medical cannabis patient identification cards shall not be transferable.

(b) A medical cannabis primary caregiver identification card may be granted at any time. A medical cannabis primary caregiver identification card shall remain valid for no longer than one year. A person may apply to renew such a primary caregiver identification card. Primary caregiver identification cards shall not be transferable. (Ord. 2003-53 § 1 (part))

Chapter 6.110 MEDICAL CANNABIS PATIENT AND PRIMARY CAREGIVER IDENTIFICATION CARDS

Section 6.110.110 Fees.

(a) The medical cannabis organization is authorized to charge each applicant for a medical cannabis patient identification card or a primary caregiver identification card a fee sufficient to cover the costs of the medical cannabis patient identification and primary caregiver identification cards program.

(b) The medical cannabis organization shall consider the extent of an applicant's ability to pay the whole or partial fee and may provide for fee waiver or reduction in appropriate cases.

No applicant shall be denied an identification card solely on the basis of his inability to pay the fee. (Ord. 2003-53 § 1 (part))

Chapter 6.110 MEDICAL CANNABIS PATIENT AND PRIMARY CAREGIVER IDENTIFICATION CARDS

Section 6.110.120 Confidentiality of records.

All documentation on a medical cannabis patient or primary caregiver shall be kept confidential. For purposes of program monitoring and compliance review, the department shall have full access to any and all records held by the medical cannabis organization relative to any and all qualified patients as well as any and all primary caregivers who have applied for, received and/or have been denied identification under the provisions of this chapter. Neither the organization nor the department shall disclose any identifying information from the organization's records without the express, written consent of the qualified patient or primary caregiver or without a court order directing the organization or department to do so. (Ord. 2003-53 § 1 (part))

Chapter 6.110 MEDICAL CANNABIS PATIENT AND PRIMARY CAREGIVER IDENTIFICATION CARDS

Section 6.110.130 Miscellaneous applications of medical cannabis.

An individual may possess the following items when used in accordance with the Compassionate Use Act of 1996 as codified in Health and Safety Code Section 11362.5 or this chapter:

- (a) Pipes, papers, water pipes, vaporizers, and other related paraphernalia;
- (b) Cannabis products, such as baked goods, tinctures, concentrated cannabis, infusions, oils, salves, and any other cannabis derivatives. (Ord. 2003-53 § 1 (part))

Chapter 6.110 MEDICAL CANNABIS PATIENT AND PRIMARY CAREGIVER IDENTIFICATION CARDS

Section 6.110.140 Authority to adopt rules and regulations.

The director is authorized to develop and publish rules, regulations, standards, or conditions to implement and enforce this chapter. (Ord. 2003-53 § 1 (part))

Chapter 6.110 MEDICAL CANNABIS PATIENT AND PRIMARY CAREGIVER IDENTIFICATION CARDS

Section 6.110.150 Enforcement.

The director is authorized to enforce the provisions of this chapter and rules or regulations adopted hereunder. The director shall publish a written protocol describing the procedures to be followed in conducting regular audits of compliance with this chapter by the organization. (Ord. 2003-53 § 1 (part))

Chapter 6.110 MEDICAL CANNABIS PATIENT AND PRIMARY CAREGIVER IDENTIFICATION CARDS

Section 6.110.160 Liability.

(a) To the fullest extent permitted by law, the county of Alameda shall assume no liability whatsoever, and expressly does not waive sovereign immunity, with respect to the medical cannabis patient and primary caregiver identification card program established herein, or for the activities of any medical cannabis organization.

(b) Each medical cannabis organization designated by the county of Alameda's public health department shall comply with the following: (a) indemnify the county of Alameda as specified by risk management; (b) carry insurance in the amounts and of the types that are acceptable to the director of public health; (c) name the county of Alameda as an additional insured; and (d) in accordance with Section 6.110.140, participate in periodic monitoring and evaluation of the operation of the program that will be conducted by the department of public health in a manner prescribed by the department. (Ord. 2003-53 § 1 (part))

Chapter 6.110 MEDICAL CANNABIS PATIENT AND PRIMARY CAREGIVER IDENTIFICATION CARDS

Section 6.110.170 Severability.

If any part or provision of this chapter, or the application thereof to any person or circumstances, is held invalid, the remainder of this chapter, including the application of such part or provision to the other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this chapter are severable. (Ord. 2003-53 § 1 (part))